O. Influx from

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File No. Pakistan/57

Legal Department

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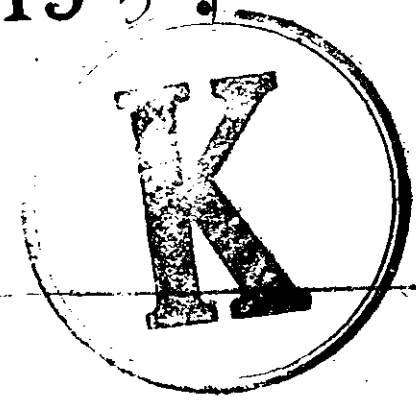

Subject:—

Opinions Under the

Influx from Pakistan (Control)

Act, 1949

P 15/6

[redacted] Influx from Pakistan/57

File No.

Gen. 194 e.

305-A

C O N T E N T S.

Legal Department File No. 0.Influx From Pakistan/51.

Sr.No.	R.I./O.No.	Subject.	Pages.
		Opinions under the Influx from Pakistan (Control) Act,1949.	
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5.	8712/4-6-1951.	Section 7. Removal of persons who entered Palanpur State without permit before its merger in India.	11-12
6.	753-Confl./30-7-1951.	Section 5(1)- Prosecution of Shri Yusufkhan Ahmedkhan for the offence under section 5(1) committed by him during his previous visit.	13-14
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9.	16115/10-10-1951.	Section 5. Whether re-entry into India on a pilgrim pass by a person who is a defaulter under this Act, meets the provisions of this Act and the Rules made thereunder.	19-22
10-	16789/22-10-1951.	-------Do--------Do------	23-24
11.	18075/14.11.1951.	Under which Act Shri Yunus, can be expelled from India into Pakistan in view of his antecedents.	25-26
12-	19460/4-12-1951.	Permit Rules 29 and 30. Cancellation of the permanent permit issued to Haji Usman Dadi.	27-30

EXT.28/6/

Legal Department.

Both Messrs.Ashfaq Malik and Akhtar Jung can be prosecuted for an offence punishable under section 5 of the Influx from Pakistan (Control) Act, 1949, and under the amended section 5A they can be tried in Bombay where they were found.

Sd/J.R.D. 9/2

Additional Secretary to Govt.

U.R. to H.D. No.2601, dated the 10th February 1951.

EKN .28/6/

Office of the R.L.A.

Husein Shikh

Entry from East Pakistan. Influx from Pakistan (Control) Act,1949.

It is not quite clear from the papers when Shikh/ Miya returned to India from Pakistan. In the Police Commissioner's letter dated 11-1-51 it is stated he returned at the end of the year, 1948, but in the same officer's letter dated 20-3-1951 it is stated he returned in June 1948. However it makes no difference whether he returned in June or at the end of 1948 because he having been admittedly employed in East Pakistan and having admittedly returned from East Pakistan via Dacca has committed no offence as will appear from the following provisions of the law.

If he returned in June 1948, then there being no law at the time controlling admission into India of persons from Pakistan by permit or otherwise he committed no offence. If he returned between 19-7-48 and 9-11-48, then also he committed no offence because the only restrictions place at the time were by Ordinance No.XVII of 1948 which came into force on 19-7-48 and was repealed from 10-11-48 and which related to admission into India of persons from West Pakistan. That Ordinance was replaced by Ordinance No.XXIV of 1948 which came into force on 10-11-48 but Rule 19 of the Rules framed under this new Ordinance exempted persons entering India from any place in the Eastern Bengal Province of the Pakistan Dominion from the requirement of being in possession of a permit.

Shaikh Husein Miya has therefore not committed any offence and no action is possible against him under the Influx from Pakistan (Control) Act,1949, which has now replaced the Ordinance.

Sd/J.R-D. 29/6

Remembrancer of Legal Affairs.

U.R. to P.O.No.621-Confl-dated the 30th June 1951.

Office of the R.L.A.

It is clear that Shri Tabani has contravened the provisions of section 3 of the Influx from Pakistan (Control) Act,1949. The offence under section 3 is one of entering India from a place in Pakistan without a ~~x~~ permit, unless exempted by rules made under the Act. Rule 12 of the Rules made under section 4 of te Act clearly requires that Shri Tabani should have obtained a permit from the High Commissioner. Since he has not obtained such permit, he has contravened the provisions of section 3 of the Act.

Sd/J.R.D. 25/7

Remembrancer of Legal Affairs.

U.R. to Passport Office, No.725-Confl.dated 25th July 1951.

BKN.28/7/

Office of the R.L.A.

(The view taken by D.S. is not correct.)

The first question for consideration is whether the applicant in returning from Goa or Daman would be deemed to have committed an offence under the Influx from Pakistan (Control)Act,1949. The applicant in the present case went to Pakistan and returned to India on a temporary permit. The period of the permit has expired. Under the terms of the permit he cannot stary in India for a period longer than what was prescribed therein. The fact that on being allowed to remove himself he wentto Goa or Daman would not make any difference and would not be elevant in regard to his conduct regarding the breach of the conditions of the permit. Although he may have how returned from Goa or Daman, he is liable to be removed under section 7 of the Influx from Pakistan (Control) Act, 1950, and is also liable to be prosecuted under section 5. The fact that he has been declared by the High Court to be an Indian Citizen is not material and does not affect the question. There is no doubt that the Influx from Pakistan (Control)Act applies to the citizens of India.

2. The correct procedure for the applicant to follow in the present case would be to return to Pakistan and apply for a permit for permanent return in Form D under rule 4 of the Rules made under the Act It is true that the applicant has been declared by the High Court to be a citizen of India and that it also appears that when he came to India he had described himself as a Pakistani national when he obtained a temporary permit. It is for him to explain to the High Commissioner why he made that mis-statement. In any case if he wants toreturn to India permanently, there is no other alternative but to obtain a permit

for.....

for ~~permit~~ permanent return.

Sd/J.R.D. 7/8

Remembrancer of Legal Affairs.

U.R. to Passport Office No.12739, dated 8th August 1951.

N.28/6/

Office of the R .L.A.

The four persons against whom action of removal from India under section 7 of the Influx from Pakistan Control Act,1947, is proposed were acquitted of the offences with which they were charged under Ordinance No.XXXIV of 1948, which was in the same terms as the Influx of Pakistan Control Act,1947, The acquittal stands. That being so they are not liable to be removed under section 7 of the Act.

Sd/J.R.D. 1/6

Remembrancer of Legal Affairs.

U.R. the Passport Office, No.8772,dated the 4th June 1951.

EKN.28/6/

Legal Department.

Prosecution of Shri Yusufkhan Ahmedkhan.

Influx from Pakistan (Control) Act, 1949. Section 5(1).

Shri Yusufkhan Ahmedkhan, a national of Pakistan, visisted India on a temporary permit bearing No.943/94252 during the month of Jund 1950. He left Godhra on or about the 30th June 1950 but failed to inform the Panch Mahals Police as requred by the conditions of the permit. This information was communicated to the High Commissioner for India in Pakistan and he has asked that Shri Yusufkhan should not be granted any permit and his name should be black-listed. Shri Yusufkhan has, however, come to India again on a temporary permit valid upto 30-8-1951, and in the circumstances, R.L.A. is requested to advise whether he should be prosecuted for the offence committed by him during his previous visit.

2. Accordin-g to condition No.1 of the Temporary permit, the permit holder must report his arrival to the nearest Police Station and when departing for Pakistan the same Police Station must be informed. Failure to observe these conditions is an offence punishable under section 5(1) of the Influx from Pakistan (Conftrol)Act, 1949. It is clear that Shri Yusufkhan has committed an offence; and he can legally be prosecuted for it even though an year has elapsed since it was committed. It is, however, for the Department to decide, as a matter of policy, whether a prosecution should or should not be launched in view of the lapse of time since the offence was committed.

Sd/B.M.D.

Additional Secretary to Government.

U.R. to Passport Office No.753.Confl dated the 30th July 1951.

EKN.28/65

LEGAL DEPARTMENT.

Three points have been referred by the Passport Officer to the R.L.A. for opinion.

They are -

(1)Whether an appeal should be filed against the order of acquittal passed by the District Magistrate, First Class, Godhra, in the case against Shri Ismail Rasul Tapa and two others under section 420 of the Indian Penal Code and section 5 of the Influx from Pakistan (Control)Act,1949.

(2) If not, whether the said three persons should be physically removed from India after giving 7 days, notice; or

(3) Whether the Government of India should be moved for cancellation of their permits for permanent return.

As regards the first point, it has been decided after consultation with the Government Pleader, High Court that this is not a fit case for an appeal and an appeal is not likely to succeed.

As regards the second point, powers of removal under section 7 of the Act can be exercised against a person if he has committed or a reasonable suspicion exists against him that he has committed an offence under the Influx from Pakistan (Control) Act, 1949 Having regard to the acquittal, which stands, powers of removal under section 7 cannot properly be invoked.

As regards the last point, Rule 29 of the Permit System Rules, 1949, which is relevent merely says,

> "Every permit issued under these rules shall be liable to concellation at any time without any reason being assigned by the issuing authority of by the Central Government."

As therefore this is a matter resting solely within the discretion of the issuing authority or the Central Govern ment, no que s-tion of application or interpretation of law arised requiring R.L.A's opinion.

Sd/
Additional Secretary to Government.

U.R. to Passport Office,No.16861,dated 23rd October 1951.

EKN.28/6/

Legal Department.

Shri.M.Y.Nadat having been discharged by the Magistrate under section 253(2), Criminal Procedure Code, 1898, he cannot, so long as the order of discharge stands, be physically removed under section 7 of the Influx from Pakistan (Control)Act,1949. A-part from that this does not appear a fit case for action under section 7 of the Act. He appears to be a permanent resident of India who returned to India only via Karachi.

Sd/-B.D.M.

Additional Secretary to Government.

U.R. to Passport Office No.16680,dated the

20th October 1951.

EKN.28/6/

Legal Department.

Shri Ebrahim N.Rangwala went to Pakistan on 18-2-1948. Thereafter the Influx from Pakistan (Control)Ordinance,1948 was promulgated and the Rules thereunder were promulgated on 29-7-1948. Shri Rangwala returned to India on 13-8-1948 on a temporary permit under the above Ordinance and Rules. The period of that permit expired on 13-11-1948. He applied to the authorities to regularise his return by a permit for permanent return and he produced his birth certificate and other papers but no permit for permanent return was issued to him. He continued to stay in India and left for Jeddah in September 1949 and returned to India in November 1949. He was then prosecuted for an offence of overstayal after 21-1-1950, contrary to the permit, punishable under section 5 of the Influx from Pakistan (Control)Act,1949, which had replaced the Ordinance. The Magistrate acquitted him. On an appeal by the Government, the High Court has confirmed the acquittal on the following grounds:-

"The learned Government pleader, who appears for the State points out that the respondent went to Jeddah only for a short time, and he returned back within a short time. But that does not seem to us to make any difference. Sof far as we can see, the only obligation upon the respondent, if he wanted to be absolved from the charge of overstaying, the period of his permit any further, was to leave Indian and go anywhere, whether to Pakistan or not."

The point is as to whether after he once left India he could any further commit the offences of overstaying the period of the permit which was issued to him. Staying over beyond the limits of the period is a continuing offence, and if a person overstays the period mentioned in his permit, he will continue to commit the offence as long as he does not leave India; but once he leaves India, he may or may not commit the offence of coming to India without a permit from Pakistan or from any other place without a pass port, but he cannot possibly commit the offence of overstaying the permit which was once issued to him, he having left India in the meanwhile."

2. The specific questions now referred to the R.L.A. in view of these observations of the High Court are:

(1) Whether re-entry into India on a pilgrim pass by a person who is a defaulter under the Influx from Pakistan (Control)Act,1949,meets the provision of the said Act and the rules made thereunder.

(2) If the defaulter under the Influx from Pakistan (Control) Act,1949,goes out of India (say to Daman, Goa etc). and then re-enters India, he is immune from the provisions of the Influx from Pakistan (Control)Act.1949.

(3).....

(3) Whether Shri Ebrahim Rangwala can even now be physically removed under section 7 of the Act for an offence of illegal entry, and if so whether we can straight away issue orders or obtain a rule from the High Court and then issue orders.

2. The answers to these questions are -

(1) Such re-entry does not amount to entering India from any place in Pakistan, directly or indirectly within the meaning of that phrase used in section 3 of the Act and therefore such re-entry without a permit is not offence under section 3 of the Act and is not punishable under the Act.

(2) They question is hypothetical and may be referred to this Department when any specific case arises, along with the facts of the particular case.

(3) Shri Rangwala cannot be prosecuted for the offence of illegal entry because the entry was not illegal as he came with a permit,. He could have been prosecuted for overstayal in respect of the period before he left for Jeddah, if his permit had not been extended to cover that period. But as the period of his permit appears to have been extended till 21-1-50 (vide A at page 48), he cannot be prosecuted for overstayal for any period before 21.1.50. As he cannot be prosecuted for illegal entry or wrongful overstayal he cannot be physically removed under section 7 of the Act.

Sd/B.M.D.

Additional Secretary to Government.

U.R. to P.& S.D.xNo.16115, dated the 10th October 1951.

EKN.28/6/

Office of the R.L.A.

The view taken by the Addl.Secy.L.D. in his opinion No.16115 dated 10th October 1951 that Shri Rangwala cannot be prosecuted for the offence of illegal entry is correct. It is true that the High Court at p.35 ante has stated that the prosecution could have charged Rangwala with the offence of having overstayed the limits of the permit after 13th November 1948. But the effect of this remark has been completely nullified by the concluding portion in the judgment at p.95 ante. The High Court states that once a person leaves India, he may or may not commit the offence of coming into India without a permit from Pakistan. Those observations are no doubt wide and they a-pply even to such cases as are referred to in R.L.A's opinion at p.51 But it is clear that the said observations would beread as having been made with reference to the facts of the particular case which was before the High Court. Thedistinguishing circumstance of that case was that Rangwala was lawfully given a pilgrim pass by the Indian authorities. If Rangwala was on a temporary permit from Pakistan, and his permit was not valid for permanent residence in India, he should not have been given a pilgrim pass. It is correctly pointed out in the Memorandum of Shri Pandya, Dy.Commnr. of Police, dated 28th September at p.59 ante that to avoid such evasion of the Influx from Pakistan (Control)Act,1949, it is necessary that the pilgrim authorities should be strict and should not issue pilgrim passes in cases in which the bona fides of the intending pilgrims are not proved.

Sd/J.R.D.

Remembrancer of Legal Affairs.

MK M. 28/6/

Office of the R.L.A.

Shri Yunus, a Christian of Multan, did not opt for Pakistan when partition came but continued to remain in the service of the Indian Army and to reside in India. He was now been discharged from the -Army and is residing a Nasik. The Deputy Inspector General of Police, Bombay, porposes that he should be expelled from India into Pakistan. The grounds on which this action is proposed are that, (1) he is described in the discharge order to be of doubtful character, (2) his relations are in Pakistan, and (3) he has committed and offence under section 81 of the Bombay prohibition Act and is alleged to have committed an offence under section 171 of the Indian Penal Code for which a prosecution is pending.

2. The R.L.A. is requested to advise what action ~~1949xxxx

Office of the R.L.A.

The letter of the Government Pleader, High Court, dated 21st November 1951 which has caused this reference refers to only two points, namely :-

1) The cancellation of the permanent permit issued to Haji Usman Dadi was not in accordance with the rules because it is signed not by or on behalf of the High Commissioner for India in Pakistan but by some person on behalf of Shri Sehgal who is described as the Attache to the High Commissioner.

ii) The case of Haji Usman Dadi has been recommended by the High Court for sympathetic consideration on account of his age and his plea of Indian citizenship.

As regards the first point, under rule 29 of the Permit Rules a permit can be cancelled by the issuing authority or by the Central Government. Here the permit has not been cancelled by the Central Government. It has been cancelled by the Attache to the High Commissioner. Rule 8 mentions the authority who can issue permits. It is not clear from the papers sent to R.L.A. who had issued the permit. If the High Commissioner issued it, then it is the High Commissioner who can cancel it and not the Attache. It will have to be ascertain from the High Commissioner through the Government of India , whether in the present case the cancellation was not done by the High Commissioner although this order may have been signed by his Attache or somebody on his behalf.

As regards point 2, rule 30 of the permit Rules leave the matter to the discretion of the Central Government. The factors on which discretion in favour of Haji Usman dadi is invoked are stated in his application and affidavit filed in the High Court. Two of these factors have been mentioned by the Government Pleader, High Court in his letter, namely his age and his claim to Indian Citizenship. His claim to Indian Citizenship is based on the allegation that he never migrated to Pakistan. He has in his application and affidavit stated that he described himself as Indian National whenn he first came back on a temporary permit here and that when at

period...

period expired and he went back to Pakistan on a temporary permit he is again described therein as an Indian National. These statements do not appear to have been denied. If they are true, it shows he had not migrated to Pakistan. His Claim to Indian Citizenship would then be well-founded. Assuming he had migrated to Pakistan, he having returned on a permanent permit, the proviso to Article 7 of the Constitution would a ply and he can be deemed to have migrated to India after 19th July 1948 abd as such entitled to come within those class of people who under Article 6(b)(ii) were entitled to apply for Indian Citizenship. But if the cancellation of this permit was made by a proper authority he cannot claim Indian Citizenship.

Sd/J.R.D. 3/12

Remembrancer of Legal Affairs.

U.R. to P.O.No.Xxx 19460 dated 4th December 1951.

EKN.28/6/